

ZONING BOARD OF ADJUSTMENT

Wednesday, February 23, 2005
Belmont Corner Meeting House
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, P. Harris, B. Paquette and B. Arey.
Alternates Present: P. Oberhausen and E. Hawkins.
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Leo & Nancy Toomey: Continuation and amendment of requests for:

- Variance of Article 5 Table 2 of the Zoning Ordinance to construct a house closer (31') to the front property line than allowed (50').
- Variance of Article 4 of the Wetland Ordinance to construct a house/garage closer (22.2' nw) to the wetlands than allowed (35').
- Variance of Article 4 of the Wetland Ordinance to construct a house/garage closer (14.2' sw) to the wetlands than allowed (35').

Property is located on Nancy Drive in an "RS" Zone, Tax Lot 107-052, ZBA # 0105, 0305 & 0405.

Mr. & Mrs. Toomey presented the application.

MOTION: B. Arey moved to untable the public hearing on the Toomey's variance applications.

The motion was seconded by N. Patten and carried. (5-0).

Mr. Toomey explained that they compromised where to put the house and moved it 10' closer to the road making it 22.2' from the wetland. They downsized the garage and connected it to the house with an 8' breezeway.

J. Olmsted stated that the power lines were a concern at the last meeting. Mrs. Toomey stated that she has calls in to PSNH and is waiting to hear from them. P. Harris wanted to know if the percentage of wetlands on the property had been determined. Mr. Toomey stated that the Wetlands Board never brought that up. B. Paquette wanted to know where the power lines are. Mr. Toomey used a plan to show her where they are located and explained that they go diagonally across the property. That is the reason why they didn't put the house 21' from the front property line.

P. Harris stated that the Toomeys did a good job redesigning the plan to be the best solution for everyone but he still thinks the garage is bigger than a standard residential garage. Mr. Toomey explained that

he is a mechanic and the garage is for his racecar and boat. P. Harris stated that they should have taken that into consideration when they purchased the land. They did reduce the size of the garage and that works with the land and creates a nice back yard. Mr. Toomey stated that they did take size into consideration when they purchased the land but they ended up with two wetlands instead of one.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – LEO & NANCY TOOMEY:

- MOTION:** P. Harris moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a house closer (31') to the front property line than allowed (50') as it meets all the criteria.
1. The variance will not be contrary to the public interest because it balances the use and the setbacks given the condition of the wetlands.
 2. A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, the wetlands;
B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
 3. The spirit of the ordinance is observed. They increased the setbacks from the original plan.
 4. Substantial justice will be done. It is a reasonable use of the property and is a relief from the wetlands.
 5. The variance would not diminish the value of surrounding properties. It is a residential use in a residential area.

The motion was seconded by B. Paquette and carried. (5-0)

- MOTION:** P. Harris moved to grant a Variance of Article 4 of the Wetland Ordinance to construct a house/garage closer (22.2' nw) to the wetlands than allowed (35') as it meet all the criteria.
1. The variance will not be contrary to the public interest because it balances the use and the setbacks given the condition of the wetlands.
 2. A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, the wetlands;
B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
 3. The spirit of the ordinance is observed. They increased the setbacks from the original plan.
 4. Substantial justice will be done. It is a reasonable use of the property and is a relief from the wetlands.
 5. The variance would not diminish the value of surrounding properties. It is a residential use in a residential area.
- The motion was seconded by N. Patten and carried. (5-0)

- MOTION:** P. Harris moved to grant a Variance of Article 4 of the Wetland Ordinance to construct a house/garage closer (14.2'sw) to the wetlands than allowed (35') as it meets all the criteria.
1. The variance will not be contrary to the public interest because it balances the use and the setbacks given the condition of the wetlands.
 2. A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property, the wetlands;
B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
 3. The spirit of the ordinance is observed. They increased the setbacks from the original plan.
 4. Substantial justice will be done. It is a reasonable use of the property and is a relief from the wetlands.
 5. The variance would not diminish the value of surrounding properties. It is a residential use in a residential area.
 6. All property bounds to be certified during construction as required.
 7. All required floodplain/Shoreland Protection documents to be submitted.
 8. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by B. Paquette and carried. (5-0)

Abutters' Hearing – Alfred Mitchell: Request for a Special Exception of Article 10 A.2 of the Zoning Ordinance to expand a nonconforming use (4 unit multi-family unit) by adding 12 units. Property is located at 42 Old State Road, in a "C" Zone, Tax Lot 201-003, ZBA #0805.

At least three members have viewed the site.

Mr. Alfred Mitchell and Atty. Ned Gordon presented the application. Attorney Gordon's assistant, Susan Duncan was also present.

Mr. Mitchell explained that the property is a difficult property and currently has a 4 unit building on it. He stated that Atty. Gordon would give the history of the property.

Atty. Gordon explained that the property is located in the commercial zone off Rte 3 behind the Belknap Mall. Mr. Mitchell has owned the property for some time. The property has an old farmhouse with 4 units and an old barn on it for storage. In the late 1980s Mr. Mitchell applied for and was denied 32 residential units. It went to court and they won approval for the 32 units. The economy changed and Mr. Mitchell did not move forward with the proposal. He later came back to the Board for 4 more units in the farmhouse and was granted approval but the economy changed again and he did not move forward with the proposal. Tonight's proposal is to tear down the existing structure and rebuild adding 12 more units. This would be expanding a nonconforming use. The property is strictly in the commercial zone. It is 7.9 acres but with the slopes it is not suited for a commercial use. The property slopes down towards the lake. The property is located off Old Rte 3 away from

the highway and is not suited for commercial use. The south side is abutted by residential use. The best use of the property is for multi-family dwellings in that area. The aesthetics from the lake would be better and is less intrusive than a commercial use

Atty. Gordon addressed the criteria for a Special Exception. The specific site is appropriate because it is the best use of the site. There is adequate septic, water and utilities. The road is not suitable for commercial use. The use would allow for more of the property to remain open and unoccupied as opposed to a commercial use. There is no factual evidence of property values being reduced. There is no nuisance or hazard involved. There is adequate sanitary facilities and safe access to the property. The multi-family units may be condos or rental units and are subject to site plan approval.

Atty. Gordon explained that 16 units are allowed based on the density requirements for multi-family units. The lot does not abut an "rs" zone. The proposal is in keeping with past acceptance, which is two units per acres and this is a 7.9 acre lot. The proposal is appropriate because multi-family in a single-family zone would be more intrusive. A multi-family in the commercial zone is less intrusive and 2 units per acre is reasonable. Standards for multi-family housing should apply here. 16 units is reasonable and is keeping with the spirit of the ordinance.

N. Patten wanted to know how many bedrooms each unit would have. Mr. Mitchell explained that he is not sure but it would probably be two bedrooms per unit. He is looking at changing the type of tenants that would be using the units. He is looking at having it as more vacation or retirement units with an onsite manager. He may be renting them or selling them as Condos and there will be an onsite manager either way. There is a sewer on the property so there may be some three bedroom units but he has not determined that yet. There is a path to the lake that has been used in the past but he is not offering it as having water frontage or access. He is using the barn for storage now and is looking at having 12' x 40' storage units. There would be 16 units for boats, RVs and extra cars. He has to go to the Planning Board to determine what would be allowed. He stated that residential use is the only way to go. If it was feasible to develop the lot commercially he would have. He wants to upgrade what is there.

J. Olmstead stated that this is a residential area and he wanted to know if there are any plans to bring water further down Rte 3. C. Daigle stated that the town has no plans on doing that but there is talk that the private sector is showing interest in bringing water from the mall to the bridge. C. Daigle stated that water would be a benefit to both commercial use and the fire department. J. Olmstead stated that even though it does not having bearing on this application he is concerned about saving lives and property. C. Daigle explained that on site water is an alternative. The site plan review will address those concerns. Mr. Mitchell explained that he plans on tapping into the 6" water main. B. Arey stated that multi-family is not an allowed use. C. Daigle explained that the use is grandfathered and that is why they only need a special exception instead of a variance. Mr. Mitchell stated that there are problems with this piece that make it not suitable for commercial use. He wants to put up nice buildings and upgrade the site.

P. Oberhausen stated that the plan that they are looking at tonight is a 1990 plan and the criteria for special exceptions have changed since then. He is concerned that the Board does not know exactly what is being proposed because the plan shows 32 units. Mr. Mitchell explained that a new plan will be drawn up

before he goes to the Planning Board for site plan approval but he wanted to make sure the special exception was granted before he has the new plan done. He used the old plan to show where the additional units would be and which units would be eliminated from the plan. There will be four 4 unit buildings. He will be maintaining the natural growth. There will be less pavement and no trucks or oil leakage associated with commercial use. This will eliminate possible contamination of Lake Winnisquam. Having residential units there instead of commercial block buildings will also enhance the view from the lake. P. Oberhausen wanted to know if the site has been checked for contamination as lots in the surrounding area have found contamination on them. Mr. Mitchell stated there is no contamination that he is aware of. If there is any dumping from the farm on the site he will clean it up. During construction there will be silt fencing around the property on the slopes facing the lake. The section of road that runs from the property to the mall will be upgraded and paved. C. Daigle stated that would encourage tenants to use the road heading towards the mall. There will be a new set of traffic lights in that area and will make access onto Rte 3 safer. She also stated that a residential use of the property will have less impact than a commercial use. Stormwater management will have less impact and that will be addressed when they go for site plan approval.

E. Hawkins stated that residential multi-family units on that site make sense since the use is grandfathered. Sixteen units is a defensible number because that is the same density as the prior use. Mr. Mitchell should not be required to meet the density requirement for a single-family zone. It is his opinion that the application meets the requirements for a special exception.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

BOARD ACTION – ALFRED MITCHELL:

MOTION: P. Harris moved to grant a Special Exception of Article 10 A.2 of the Zoning Ordinance to expand a nonconforming use (4 unit multi-family unit) by adding 12 units as it meets all the criteria.

1. The use is grandfathered.
2. The specific site is appropriate for the use. It is a pre-existing grandfathered use.
3. No factual evidence is found that property values in the district will be reduced. The uniqueness of the land makes it better suited for multi-family use than a commercial use.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved. The use is less intrusive than a commercial use.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

The motion was seconded by B. Arey and carried. (5-0)

OTHER BUSINESS:

A. BOARD'S ACTION - MINUTES:

B. Arey made a motion to approve the minutes of January 26, 2005. N. Patten seconded. Carried (5-0)

B. Paquette made a motion to approve the minutes of February 14, 2005. N. Patten seconded. Carried (5-0)

STAFF REPORT:

1. HANDBOOKS:

The members received a new updated handbook. The book includes OEP handbook and case law.

2. ILLEGAL APARTMENTS:

The Board discussed the number of illegal apartments that are appearing all around Belmont. C. Daigle explained that the Land Use Office and Code Enforcement having been working on trying to bring the illegal apartments into compliance. It is hard to determine if there is an illegal apartment in some residences because it has to meet the definition of an apartment. The definition is specific on what constitutes an apartment. In-law apartment now must be recorded at the registry. This helps when property is transferred. The new owners are now aware of what the restrictions are for the apartment.

ADJOURNMENT:

MOTION: On a motion by N. Patten, seconded by B. Arey, it was voted unanimously to adjourn at 8:07 p.m.

Respectfully submitted,

Elaine M. Murphy